

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON MIGUEL ESCAMILLA,
Plaintiff,
v.
A. OBOYLE, et al.,
Defendants.

No. 2:22-cv-2038 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. The original complaint was screened, was found to state a cognizable claim for excessive force in violation of the Eighth Amendment, and was ordered served. ECF No. 6. Currently before the court is plaintiff's first amended complaint, filed as a matter of course under Federal Rule of Civil Procedure 15(a)(1). ECF No. 23. Also before the court is defendants' motion for an extension of time to file service waivers. ECF No. 22.

I. First Amended Complaint

A. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against "a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]

monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. Franklin, 745 F.2d at 1227-28 (citations omitted).

“Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

“[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.

1 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
 2 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor,
 3 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

4 B. The Amended Complaint

5 The amended complaint, like the original, alleges that defendants Oboyle and Phillips
 6 assaulted plaintiff on August 24, 2022, and falsified documents and evidence against him to cover
 7 up the assault. ECF No. 23. Plaintiff's allegations are sufficient, as they were in the original
 8 complaint, to state an Eighth Amendment excessive force claim against defendants. See Hudson
 9 v. McMillian, 503 U.S. 1, 6-7 (1992) (force is excessive if used "maliciously and sadistically to
 10 cause harm" (citation omitted)).

11 However, plaintiff's attempt to add a due process claim (ECF No. 23 at 7-8, 13) fails
 12 because the allegations that defendants made false allegations against him, wrote him up for a
 13 false disciplinary violation, and planted evidence to cover up their assault do not support a viable
 14 due process claim. See Hines v. Gomez, 108 F.3d 265, 268 (9th Cir. 1997) ("[T]here are no
 15 procedural safeguards protecting a prisoner from false retaliatory accusations."); accord, Sprouse
 16 v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989); Freeman v. Rideout, 808 F.2d 949, 951 (2nd Cir.
 17 1986). Plaintiff's allegations cannot support relief for a violation of due process, as a matter of
 18 law, because the Due Process Clause is not implicated by the conduct at issue.

19 C. No Leave to Amend

20 Leave to amend should be granted if it appears possible that the defects in the complaint
 21 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31
 22 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint
 23 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United
 24 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

25 The undersigned finds that, as set forth above, plaintiff cannot state a claim for a due
 26 process violation based upon false accusations. The conduct of which plaintiff complains does
 27 not implicate his due process rights, so amendment would be futile. This claim should therefore
 28 be dismissed without leave to amend.

II. Motion for Extension of Time

The Office of the Attorney General has specially appeared in this matter to request an extension of time to execute service waivers for defendants Oboyle and Phillips. ECF No. 22. Good cause appearing, the request for an extension of time in which to execute service waivers will be granted. The Clerk of the Court will also be directed to serve a copy of the first amended complaint and this order on Deputy Attorney General Peter Lewicki for inclusion with the e-service packet.

In accordance with the above, IT IS HEREBY ORDERED that:

1. In accordance with 28 U.S.C. § 1915A, the Court has screened and found service of the first amended complaint appropriate. Defendants Oboyle and Phillips will be required to respond to plaintiff's excessive force claim.

2. Defendants' motion for an extension of time (ECF No. 22) is GRANTED. Defendants shall have until February 9, 2023, to file their waivers of service.

3. The Clerk of the Court is directed to serve a copy of the first amended complaint (ECF No. 23) and this order on Deputy Attorney General Peter Lewicki for inclusion with the e-service packet.

4. The Clerk of the Court shall randomly assign a United States District Judge to this action.

IT IS FURTHER RECOMMENDED that plaintiff's Fourteenth Amendment due process claim be dismissed without leave to amend.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judges Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified

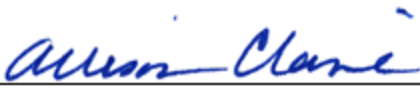
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1 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir. 1991).

3 DATED: January 25, 2023

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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